Reg. No. GR/RNP/GOA/32

RNI No. GOAENG/2002/6410

Panaji, 24th November, 2011 (Agrahayana 3, 1933)

SERIES II No. 34

OFFICIAL GAZETTE

GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

GOVERNMENT OF GOA

Department of Co-operation

Office of the Registrar of Co-operative Societies

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Notification

No. 5-1342-2011-ARSZ/HSG

In exercise of the powers vested in me under Section 8 of the Goa Co-operative Societies Act, 2001, "The Green Empire Co-operative Housing Society Limited," Muth Sankul Road, Gogol, Margao-Goa, is registered under code symbol No. HSG-(b)-810/South-Goa/2011.

Sd/- (P. M. Naik), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 3rd October, 2011.

Certificate of Registration

"The Green Empire Co-operative Housing Society Limited," Muth Sankul Road, Gogol, Margao-Goa has been registered on 3-10-2011 and it bears registration code symbol No. HSG--(b)-810/South-Goa/2011 and it is classified as "Housing Society" under sub-classification No. 7-(b)-Co-partnership Housing Society in terms of Rule 8 of the Goa Co-operative Societies Rules, 2003.

Sd/- (P. M. Naik), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 3rd October, 2011.

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Notification

No. 5-1334-2011-ARSZ/HSG

In exercise of the powers vested in me under Section 8 of the Goa Co-operative Societies Act, 2001, "The Royal Orchid Co-operative Housing Maintenance Society Limited," Murida, Fatorda Goa, is registered under code symbol No. HSG--(d)-814/South-Goa/2011.

Sd/- (P. M. Naik), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 7th October, 2011.

Certificate of Registration

"The Royal Orchid Co-operative Housing Maintenance Society Limited," Murida, Fatorda Goa, has been registered on 7-10-2011 and it bears registration code symbol No. HSG--(d)-814/South-Goa/2011 and it is classified as "Housing Society" under sub-classification No. 7-(d)-Co-operative Housing Maintenance Housing Society in terms of Rule 8 of the Goa Co-operative Societies Rules, 2003.

Sd/- (P. M. Naik), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 7th October, 2011.

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Notification

No. 5-1350-2011-ARSZ/HSG

In exercise of the powers vested in me under Section 8 of the Goa Co-operative Societies Act, 2001, "The Joquim Krishna Co-operative Housing Society Limited," Aquem Alto, Margao-Goa is registered under code symbol No. HSG-(b)-816/ /South-Goa/2011.

Sd/- (P. M. Naik), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 12th October, 2011.

Certificate of Registration

"The Joquim Krishna Co-operative Housing Society Limited," Aquem Alto, Margao-Goa has been registered on 12-10-2011 and it bears

registration code symbol No. HSG-(b)-816/South--Goa/2011 and it is classified as "Housing Society" under sub-classification No. 7-(b)-Co-partnership Housing Society in terms of Rule 8 of the Goa Co-operative Societies Rules, 2003.

Sd/- (P. M. Naik), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 12th October, 2011.

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Department of Education, Art & Culture

Directorate of Technical Education
(College Section)

Order

No. 16/20/93-EDN-IV

Ref.: 1) Three month's Notice for VRS submitted by Ms. Tania Vanessa Genevieva da Silva da Costa Colaco, Selection Grade Lecturer forwarded by the Principal, Goa College of Engineering vide letter No. 4/9/94/ /GEC(E)/2262 dated 23-09-2011.

2) An undertaking submitted vide letter dated 19-09-2011 from Tania Vanessa Genevieva da Silva da Costa Colaco, Selection Grade Lecturer, Goa College of Engineering, Farmagudi, Ponda-Goa.

The Notice of Voluntary Retirement given by Ms. Tania Vanessa Genevieva da Silva da Costa Colaco, Selection Grade Lecturer, Goa College of Engineering, Farmagudi, vide her notice referred to above, under Rule 48(A) (1) of CCS (Pension) rules is hereby accepted w.e.f. 09-12-2011 (Forenoon). She, therefore, shall stand relieved w. e. f. 09-12-2011 (f.n.).

By order and in the name of the Governor of Goa.

Vivek B. Kamat, Director of Technical Education & ex officio Additional Secretary.

Porvorim, 2nd November, 2011.

Corrigendum

No. 16/9/95-EDN-IV/4675

Read: 1) Notice dated 22-11-2010 of Ms. Madhumita Tamhane, Assistant Professor, Electronics & Telecommunication Engineering forwarded with endorsement No. 4/5/95/GEC(E)/3047 dated 07-12-2010 from the Principal, Goa College of Engineering, Farmagudi, Ponda-Goa.

2) Order No. 16/9/95-EDN/591 dated 02-03-2011.

The last line in the above referred order shall read as "She, therefore, shall stand relieved w.e.f. 02-03-2011 (f.n.)".

Instead of

"She, therefore, shall stand relieved w.e.f. 01-03-2011 (a.n.)".

By order and in the name of the Governor of Goa.

Vivek B. Kamat, Director of Technical Education ex officio Additional Secretary.

Porvorim, 15th November, 2011.

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Department of General Administration

Notification

No. 2/2/2009-GAD-III

The Governor of Goa is pleased to reschedule Office timings during 42nd International Film Festival of India, 2011, for all the Government offices and Local/Autonomous Bodies, Public Sector undertakings situated within the jurisdiction of City Corporation of Panaji, Taleigao Panchayat, Secretariat-Porvorim and Margao and orders that these Offices shall close at 2.30 p.m. on 23-11-2011 to avoid traffic congestion in Panaji and Margao.

By order and in the name of the Governor of Goa.

Prabhakar V. Vaingankar, Under Secretary (GA).

Porvorim, 23rd November, 2011.

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Department of Labour

Order

No. 28/44/2011-LAB

Whereas the Government of Goa is of the opinion that an industrial dispute exists between M/s. Goa Antibiotics and Pharmaceuticals Limited, Tuem, Pernem, Goa, and it's Workman Ms. Surekha Haldankar, Account Assistant, in respect of the matter specified in the Schedule hereto (hereinafter referred to as the "said dispute");

And whereas the Government of Goa considers it expedient to refer the said dispute for adjudication.

Now, therefore, in exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (hereinafter referred to

as the "said Act"), the Government of Goa hereby refers the said dispute for adjudication to the Industrial Tribunal of Goa at Panaji-Goa, constituted under Section 7-A of the said Act.

SCHEDULE

"(1) Whether the action of M/s. Goa Antibiotics and Pharmaceuticals Limited, Tuem, Pernem, Goa, in dismissing from services it's Workman Ms. Surekha Haldankar, Account Assistant, with effect from 01-04-2010, is legal and justified?

(2) If not, what relief the Workman is entitled?".

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 10th November, 2011.

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Order

No. 28/2/87-2001-Lab-II

On placement of Services of Smt. B. K. Thaly, Principal, District and Session Judge, Margao, High Court of Bombay vide letter No. A. 1201/G/2011 dated 08-11-2011 for appointment as Presiding Officer Industrial Tribunal-cum-Labour Court-I the Governor of Goa is pleased to appoint Smt. B. K. Thaly, as Presiding Officer Industrial Tribunal-cum--Labour Court-I on deputation in the pay scale of ` 16,750-400-19,500-450-20,500 with effect from the date of her joining the post. However, the Government has approved to protect the pay and allowances of Smt. B. K. Thaly, as per her entitlement.

Smt. B. K. Thaly, shall be on deputation for an initial period of one year in the first instance.

The deputation of Smt. B. K. Thaly shall be governed by standard terms and conditions of deputation as contained in Office Memorandum No. 13/4/74/PER dated 12-02-1999 issued by the Department of Personnel, Government of Goa and as amended from time to time.

Smt. B. K. Thaly, shall exercise her option for fixation of pay within a months' time.

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 15th November, 2011.

Order

No. 28/2/87-2001-LAB-II

Read: Government Order No. 28/2/87-2001-LAB-II dated 30-01-2008.

On the recommendation of the High Court of Bombay, Government is pleased to extend the deputation period of Smt. Anuja Prabhudessai, Presiding Officer, Industrial Tribunal-cum-Labour Court-I w.e.f. 30-01-2009 till Smt. B. K. Thaly take over her charge as Presiding Officer, Industrial Tribunal-cum-Labour Court-I or till she is relieved by the Government of her duty, on the same terms and conditions stipulated in the above referred order.

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 15th November, 2011.

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Notification

No. 28/1/2011-LAB

The following award passed by the Industrial Tribunal-cum-Labour Court, at Panaji-Goa on 12-07-2011 in reference No. IT/73/98 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 9th November, 2011.

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IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT PANAJI, GOA

(Before Smt. Anuja Prabhudessai, Hon'ble Presiding Officer)

Ref. No. IT/73/98

Shri Vaikunth Gaonkar,
Rep. by the President Goa
Trade and Commercial
Workers Union,
Velho Bldg. Panaji-Goa. … Workman/Party I

V/s

M/s. Shree Chitramandir,
Marcella-Goa. … Employer/Party II

Workman/Party I represented by Adv. Shri Suhas Naik.

Employer/Party II represented by Adv. Shri N. Bodke.

AWARD

(Passed on this 12th day of July, 2011)

By order dated 27-07-1998, the Government of Goa, in exercise of powers conferred by Section 10 (1) (d) of the Industrial Disputes Act 1947, has referred the following dispute to this Tribunal for adjudication.

"(1) Whether the action of the management of the M/s. Shree Chitra-Mandir, Marcella, Goa, in refusing the employment to the Workman Shri Vaikhunt Gaonkar w.e.f. 06-12-1997, is legal and justified?

(2) If not, to what relief the Workman is entitled?"

2. The reference was registered under No. IT/73/98 and notices were issued to both parties. In pursuance, the parties put in their appearance. The Workman/Party I filed statement of claim at Exb. "3". The Employer/Party II filed written statement at Exb. "4". The rejoinder of the Party I is at Exb. "6".

3. The Party II is a theatre, having its place of establishment at Marcel, Goa. The Party I claims that he was working with the Party II as a Door Keeper w.e.f. 1-2-1969, on salary of Rs. 700/- per month. The grievance of the Party I is that he was not allowed to report for duty on 6-12-1997 on the pretext that he was late in reporting for work. The Party I tried to report for duty on 7-12-1997, but he was not allowed to report for work. From 7-12-1997 till 11-1-1998, he made several attempts to convince the management of the Party II to allow him to report for duty but his request was not conceded. The Party I has stated that the Party II had sent to him a letter dated 4-1-1998, wherein it was alleged that he had voluntarily ceased work w.e.f. 17-12-1997. The Party II had advised him to collect a cheque for Rs. 12,481.15 (Rupees twelve thousand four hundred and eighty one rupees and fifteen paise only) towards full and final settlement of his dues. The Party I has stated that the Party II had refused employment to him without any justifiable grounds. Hence, he contacted the President of Goa Trade and Commercial Worker Union, Panaji. Thereafter the Union raised an Industrial Dispute, which was admitted in conciliation. The Party II did not attend the conciliation proceedings and as such, the matter ended in failure. The Conciliation Officer submitted the failure report, pursuant to which the Government has made the present reference.

4. The Party I has claimed that his termination is in contravention of Section 25F of Industrial Disputes Act, 1947. He was not afforded any opportunity of being heard and was not called upon to report for duty. The Party I has stated that he has worked for 29 years and that his past records are unblemished. The Party I has stated that the act of the Party II in refusing employment to him is illegal and unjustified. The Party I has therefore sought reinstatement with full back wages and continuity in service.

5. The Party II has claimed that the Union has no locus standi to raise the dispute on behalf of the Party I and that the dispute referred is not an industrial dispute within the meaning of the Act. The Party II has further stated that the Tribunal has no jurisdiction to entertain and decide the dispute. On merits the Party II has stated that the Party I had stopped attending duties from 7-12-1997, without any communication or intimation. Hence, by letter dated 4-1-1998, the Party I was called upon to collect his dues. The Party II has stated that the Party I did not collect the dues, hence, vide letter dated 20-1-1998, a cheque for Rs. 12,481.15 (Rupees twelve thousand four hundred and eighty one rupees and fifteen paise only) was forwarded to the Party I towards full and final settlement of dues including gratuity payable. The Party II has stated that the Party I did not controvert the contents of the letters dated 4-1-1998 and 20-1-1998 on the contrary encashed the amount. The Party II has stated that the Party I is gainfully employed and that he is not entitled for any relief.

6. Based on the aforesaid pleadings, the following issues were framed:

1. Whether the Party I proves that the Goa Trade and Commercial Workers Union has the locus standi to raise the dispute on his behalf?
2. Whether the Party I proves that he was employed with the Party II as a door keeper w.e.f. 1-2-1969 on salary of Rs. 700/- p.m.?
3. Whether the Party I proves that the Party II refused employment to him from 6-12-1997 which is illegal and unjustified?
4. Whether the Party II proves that this Tribunal has no jurisdiction to decide the reference?
5. Whether the Party II proves that there is no existing Industrial Dispute and hence the reference is not maintainable?
6. Whether the Party II proves that the Party I is gainfully employed?
7. Whether the Party I is entitled to any relief?
8. What Award?

7. The Party I has examined himself. The Party II has examined Mahableshwar Parab and Chandrakant Velip. Lnd. Adv. Shri S. Naik has

argued on behalf of the Party I. No arguments are advanced on behalf of the Party II. I have perused the records and considered the arguments advanced by Lnd. Adv. Shri S. Naik and my findings on the aforesaid issues are as under:

8. *Issue Nos. 1 & 4:* The Party I/Workman was employed with the Party II theatre as a door keeper. The Party I had alleged that the Party II had refused employment to him w.e.f. 6-12-1997. The Party I had approached the Goa Trade and Commercial Worker Union, Panaji, pursuant to which the President of the Union had raised an Industrial Dispute (Exb. W-5). The Party II has challenged the locus standi of the said Union to espouse the cause of the Party I/Workman on the ground that the said Union was not a recognized Union of the Party II and that none of its employees including the Party I are the members of the said Union. The Party II has therefore claims that the Union had no locus standi to raise the dispute and that the dispute referred is not an Industrial Dispute and that this Tribunal has no jurisdiction to try the same.

9. It may be mentioned that the decision of the Bombay High Court in the case of *Maharashtra General Kamgar Union v/s The State of Maharashtra and others reported in 1995(3) Bom.C.R. 53,* is a complete answer to the objections raised by the Party II. In the said case, the Union had espoused the cause of dismissed workers. The respondent/Company had raised objections as to tenability of the reference. It was alleged that the petitioner Union had no locus standi to raise the industrial dispute on behalf of all the Workmen employed in the respondent Company, because the Workmen had resigned from the petitioner Union and entered into settlements on other issues. It was contended that the petitioner Union did not represent any Workman employed in the establishment of the respondent Company and, therefore, was incompetent to espouse the case of the 25 dismissed Workmen. Consequently, the demand made by the petitioner on behalf of the 25 dismissed Workmen did not amount to an 'industrial dispute' within the meaning of Section 2(k) of the Act. Accepting both the preliminary objections, the Labour Court held that the reference was bad in law and deserved to be rejected on the technical grounds urged by the Respondent Company. The said order was challenged before the High Court.

10. The Hon'ble Bombay High Court has held that both the objections were thoroughly misconceived and that the learned Judge had failed to take notice of the drastic change brought about in the legal position as a result of the insertion of Section 2-A in the Act by Act XXXV of 1965. The Hon'ble Bombay High Court has held that *"Section 2-A in terms was intended to get over the difficulty and hardship to Workmen caused by the rigid stratification of law resulting from the consistent interpretation of Section 2(k) of the Act defining the expression "industrial dispute". Consistent with this intention, Parliament provided a narrow exception to the general definition of "industrial dispute" in Section 2(k) of the Act. With regard to discharge, dismissal, retrenchment or termination of service, Section 2-A by a fiction of law, provides that such a dispute shall be deemed to be an industrial dispute, notwithstanding that no other Workmen nor any Union of Workmen is a party to the said dispute. As a result of the legal fiction introduced by Section 2-A any dispute raised by or on behalf of an individual Workman amount to an industrial dispute only if it pertains to his discharge, dismissal, retrenchment or otherwise removal from service, even if it is not espoused by other Workmen employed in the industrial establishment, collectively or through a trade Union."*

11. While countering the arguments that the dispute, which had been espoused by the Union, would not amount to an industrial dispute within the purview of Section 2-A of the Act, the Hon'ble Bombay High Court had considered the judgment in the case of *Alguram v. State of Punjab, 1977(II) L.L.J. 207.* In this case, the Punjab & Haryana High Court has held that: *"The espousal by the Union of the dispute between the Workman and the Employer would not take it out of Section 2-A merely on that account. The espousal by the other Workmen may also make it a collective dispute, but it does not on that account cease to be a dispute between the individual Workman and the management. What Section 2-A really means is that a dispute between an individual Workman and the management in regard to the termination of the services of the Workman shall be deemed to be an industrial dispute, whether or not other Workmen join the dispute. It does not mean that so soon as other workmen join the dispute it goes out of the purview of Section 2-A."* It was also held in this case that, merely because a dispute was not raised in express terms before the management of the employer, it could not be held that there was no dispute or that the reference was non-est.

12. In the instant case, the grievance of the Party I is that he was refused employment. The Party I had approached the Union and the dispute was raised by the Union. Though in the rejoinder at Exb. 6, the Party I/Workman had denied that he is not a member of the said Union, in his cross-examination he has stated that he had met the president of the said Union for the first time in the month of January, 1988. He has admitted that he was not a member of the said Union. He has further stated that he was not a member of the Union even as on the date of his deposition i.e. on 3-8-1999. It is thus evident from this statement that as on the date of the reference the Party I was not a member of the Union that had espoused the dispute. However, this fact is of no consequence in view of introduction of Section 2A in the Act, which permits an individual Workman who is discharged, dismissed or retrenched or whose services are otherwise terminated to raise an industrial dispute. In view of the amendment made in the Act by introduction of Section 2-A, the dispute would become an industrial dispute. The fact that it was espoused by the Union will not take it out of purview of Section 2A of the Act. The principles laid down in the case of *Maharashtra General Kamgar Union* (supra) are squarely applicable to the facts of the present case and in view of the binding judicial pronouncement of law; I have no hesitation in rejecting the preliminary objections raised by the Party II as to tenability of the reference.

13. *Issue No. 2:* The Party I has claimed that he was employed with the Party II as a door keeper w.e.f. 1-2-1969 on salary of Rs. 700/- (Rupees seven hundred only) per month. In support of this claim the Party I has examined himself. He has deposed that he was appointed as a door keeper since 1st February, 1969 on salary of Rs. 60/- per month. He has produced the appointment letter at Exb. W-1. A perusal of the appointment letter clearly substantiates the statement of the Party I that he was appointed as a door keeper since 1st February, 1969 and that his salary at the time of appointment was Rs. 60/- per month. The Party I has deposed that he was refused employment w.e.f. 6-12-1997 and that his last drawn salary was Rs. 700/- per month.

14. The Party II has not denied that the Party I was employed as a door keeper but has only denied that the last drawn salary of the Party I was Rs. 700/- per month. In the cross examination of the Party I it was brought on record that the appointment letter at Exb. W-1 does not state that the Party I would be given annual increment. It was sought to be insinuated that the Party I continued to work on the monthly salary of Rs. 60/-. It is true that the appointment letter at Exb.W-1 does not make mention of annual increment however, this fact does not and cannot lead to an inference that the Party I was not paid annual increment or that he had continued to work for over 27 years on salary of Rs. 60/- per month. It is to be noted that the Party II has not adduced any evidence, either documentary or oral, to prove the quantum of wages paid to the Party I. Moreover, the Party II has not given any reasons for not producing the relevant documents such as the wage register, which would have sufficiently proved the quantum of wages paid to the Party I as on 6th December, 1997. Non-production of these vital documents constitutes failure on the part of the Party II to produce the best evidence and a inference has therefore to be raised against it that if such evidence had been produced, the same would have gone against the case propounded by it. It is therefore held that the Party I was employed with the Party II as a door keeper and that his last drawn salary was Rs. 700/- per month. Issue No. 2 is answered in the affirmative.

15. *Issues No. 3 & 5:* The case of the Party I is that he was refused employment w.e.f. 6-12-1997. In support of his case, the Party I/Workman has deposed that he has worked for the Party II continuously from February, 1969. He has deposed that on 6-12-1997, he had reported for work but he was refused employment by the employer Shri Sitakant Sinari. He has deposed that the refusal of employment was not in writing but was oral. He has deposed that he had reported for work again on 7-12-1997 but the employer did not allow him to join duty.

16. The Party II had averred in the written statement that the Party I/Workman had stopped reporting for work from 7-12-1997 and as such, it was constrained to address a letter dated 4-1-1998 to the Party I, advising him to collect the dues within 15 days of the receipt of the letter. The Party II has stated that the Party I had not controverted the contents of the said letter wherein it was clearly stated that the Party I had himself stopped reporting to duty. It is further averred that the Party I had not collected the dues and as such vide letter dated 20-1-1998, a cheque for sum of Rs. 12841.15 was sent to the Party I towards full and final settlement of his dues including the Gratuity payable to him. The Party II has stated that the Party I had not controverted

the contents of the said letter and had in fact encashed the said cheque.

17. It may be mentioned here that the Party I has categorically deposed before this Tribunal that he had replied to the letter dated 4-1-1998 (Exb. W-2) vide reply dated 11-01-1998. The Party I has produced the said letter which is at Exb. W-3. A perusal of the said letter clearly indicates that the Party I had specifically denied the contents of letter dated 4-1-1998. The Party I had stated that he was not allowed to join duty on 6-12-1997 and that he had reported for duty again on 7-12-1998 but was not allowed resuming duties. The Party I has deposed that he had sent another letter dated 18-01-1998 by registered post wherein he had denied the contents of the letter dated 4-1-1998 and had reiterated the contents of the letter dated 11-1-1998. The Party I has deposed that the Party II had not claimed the said letter. The Party I has produced the said unclaimed letter alongwith the postal slip, the envelope and the AD card at Exb.W-4 colly. The evidence of the Party I vis-à-vis letters dated 11-1-1998 and 18-1-1998 at Exb. W-3 and Exb. W-4 colly clearly indicate that the Party I had not only controverted the contents of the letter dated 4-1-1998 but had specifically stated that he was refused employment.

18. The Party I had deposed that since the Party II had not taken him back in service he had approached Shri Christopher Fonseca, the President of the Goa Trade and Commercial Workers Union and informed him about his grievance. The Party I has deposed that thereafter Shri Christopher Fonseca addressed a letter dated 29-1-1998 (Exb. W-5) to the Party II wherein he had requested Party II to permit the Party I Workman to resume duty. A copy of the said letter was also sent to the Dy. Labour Commissioner, Panaji with a request to intervene in the matter. Had the Party I left the service voluntarily, he would not have resorted to such action. Thus, the fact that the Party I had approached the Union immediately leads to an inference that the Party I had not left the service voluntarily but he was refused employment.

19. It is also to be noted that on receipt of the Industrial Dispute the Asstt. Labour Commissioner, Panaji had admitted the matter in conciliation. The conciliation minutes at Exb. W-7 and the Failure Report at Exb. W-8 clearly indicate that the Party II had not appeared in the conciliation proceedings. The conduct of the Party II also leads to an inference that the defence is not genuine.

20. It may be mentioned that in *(M/s. Nicks (India) Tools Vs. Ram Surat and another, reported in 2004(8) S.C.C. 222,* the Apex Court held that since the Management admitted that the workman was in their service till a particular date, the burden of proving that he voluntarily left the service would fall on the management. In the instant case, the Party II has not adduced any evidence to prove abandonment of work. The fact that the Party I had encashed the cheque does not lead to an inference that the Party I had abandoned the job more so when there is absolutely no material on record to show that the Party I had secured a better job or had any other reasons for leaving the job. Under the circumstances, it is indeed difficult to believe that the Party I would himself stop reporting for duty, since he would be a person in need of the employment. Hence, it can be safely inferred that the services of the Party I were discontinued by the Party II, rather than the Party I himself failing to report for duty. Under the circumstances, in my considered view, the evidence on record amply proves that the Party I had not abandoned the service but he was refused employment by the Party II. Consequently, dispute raised by the Party I is an existing dispute and this Tribunal has jurisdiction to try the same.

21. The next question, which falls for my consideration is whether the action of the Party II in refusing employment to the Party I is legal and justified. It is an undisputed fact that the Party I was in continuous service from February, 1969 till 6-12-1997. The Party I was not served with any memorandum, notice, or charge-sheet and the Party II did not hold domestic enquiry and did not terminate the services of the Party I for any act of misconduct.

22. It may be mentioned that in case of retrenchment within the meaning of section 2(oo), the Party II was required to comply with the condition precedent prescribed in section 25F of the Act, unless the termination was covered by any of the four stipulated categories, which are not included in the definition of 'Retrenchment'. i.e. (i) Voluntary retirement of a Workman; (ii) Retirement of the Workman on reaching the age of superannuation as contained in the contract of employment; (iii) Termination of the service of the Workman as a result of the non-renewal of the contract of employment on its expiry or upon such contract being terminated in accordance with a stipulation contained therein; and (iv) A termination on the ground of continued ill-health.

23. In the instant case, there is absolutely no evidence on record to show that the termination was covered by any of these four stipulated categories, which are not included in the definition of 'Retrenchment'. Hence the Party II was required to comply with the procedure contemplated under section 25-F of the Industrial Disputes Act, 1947. It is to be noted that the Party I was not given one-month notice indicating reasons for retrenchment. Though the Party II had paid to the Party I sum of Rs. 12,481.15/- the said amount was paid towards his dues and included gratuity. The Party II neither has claimed that the said amount constitutes retrenchment compensation nor adduced any evidence to show that Party I has been paid retrenchment compensation payable under the Act. It is therefore evident that the Party II had not complied with the mandatory procedure prescribed under Section 25F. This being the case, the termination of the Party I is held to be illegal and unjustified. The issue No 3 is therefore answered in affirmative and issue No 5 is answered in the negative.

24. *Issue No. 6 :* The Party II has alleged that the Party I is gainfully employed. In support of this contention, the Party II has examined Shri Mahabaleshwar Parab, the then Sarpanch of Village Panchayat Tivrem. This witness has deposed that the shop No.305 is registered in the Panchayat records in the name of the Party I. He has produced the certificate at Exb. E-2 wherein he has stated that the said cold drink shop No. 305 was registered in the Panchayat records on 16-10-1998 for the year 1998-1999. The aforesaid evidence which has gone unchallenged clearly indicates that the shop No. 305 is registered in the Panchayat records in the name of the Party I and this leads to an inference that the Party I is running the said cold drink shop.

25. Be that as it may, the onus of proving that he was not gainfully employed was on the Party I. In the case of *Kendriya Vidyalaya Sangathan and Another v. S.C. Sharma, (2005) 2 SCC 363* the Apex Court has held that *"...When the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim."* Similarly, in the case of *U.P. State Brassware Corporation Ltd.v/s Udai Narain Pandey, reported in 2006 AIR(SC) 586,* the Apex Court has reiterated that *"It is now well-settled by various decisions of this Court that although earlier this Court insisted that it was for the employer to raise the aforementioned plea but having regard to the provisions of Section 106 of the Indian Evidence Act or the provisions analogous thereto, such a plea should be raised by the Workman."*

26. In the light of aforesaid principles, there can be no dispute that the burden was on the Party I to prove that he was not gainfully employed since the date of termination of his service. In the instant case, the service of the Party I was terminated in the year 1997. Twenty-seven long years have lapsed since the date of termination. The Party I has neither pleaded nor proved that he was not gainfully employed during this interregnum period. The Party I has also not explained how he has maintained himself during these years. These facts vis-à-vis the evidence of Mahabaleshwar Parab lead to an inference that the Party I is gainfully employed. Hence, issue No. 6 is answered in the affirmative.

27. *Issue No. 7 :* The next question that falls for my determination is what relief the Party I is entitled to. In the case of *Talwara Co-op. Credit & Service Society Ltd v/s Sushil Kumar (2008 (9) SCC 486)* the Apex Court has held that *"Grant of a relief of reinstatement, it is trite, is not automatic. Grant of back wages is also not automatic. The Industrial Courts while exercising their power under Section 11A of the Industrial Disputes Act,1947 are required to strike a balance in a situation of this nature. For the said purpose, certain relevant factors, as for example, nature of service, the mode and manner of recruitment, viz., whether the appointment had been made in accordance with the statutory rules so far as a public sector undertaking is concerned etc., should be taken into consideration.For the purpose of grant of back wages; one of the relevant factors would indisputably be as to whether the workman had been able to discharge his burden that he had not been gainfully employed after termination of his service."*

28. Reverting to the facts of the present case, the Party I is gainfully employed. Besides the Party I has already crossed the age of superannuation and as such he is not entitled for the relief of reinstatement wages and instead in my considered view, monetary compensation would meet the ends of justice. Considering the fact that the Party I had worked for twenty-seven years in my considered opinion, the compensation of Rs. 50,000/- in lieu of reinstatement shall be appropriate, just, and equitable.

Under the circumstances and in view of discussion supra, I pass the following order:

ORDER

1. The action of the management of the M/s. Shree Chitra-Mandir, Marcella, Goa, in refusing the employment to the Workman Shri Vaikhunt Gaonkar, w.e.f. 06-12-1997, is illegal and unjustified.
2. The Party II is directed to pay to the Party I monetary compensation of Rs. 50,000/- within two months from the date of publication of award failing which the same shall carry interest at the rate of 9% p.a.

Inform the Government accordingly.

Sd/-
(A. Prabhudessai),
Presiding Officer,
Industrial Tribunal-
-cum-Labour Court-I.

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Notification

No. 28/1/2011-LAB

The following award passed by the Industrial Tribunal-cum-Labour Court, at Panaji-Goa on 01-07-2011 in reference No. IT/35/2005 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 9th November, 2011.

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IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI, GOA

(Before Smt. Anuja Prabhudessai, Hon'ble Presiding Officer)

Ref. No. IT/35/2005

Shri Shaikh Fairoz Ahmed,
C/o. Shaikh Abdul Shukoor,
Opp. Chodankars House,
Sasmolem Baina,
Vasco-da-Gama, Goa. … Workman/Party I

V/s

M/s. Goa Antibiotics &,
Pharmaceuticals Ltd.,
Tuem, Pernem-Goa. … Employer/Party II

Workman/Party I represented by Adv. Shri L. V. Palekar.

Employer/Party II represented by Adv. Shri P. J. Kamat.

AWARD

(Passed on this 1st day of July, 2011)

By order dated 20-07-2005, the Government of Goa, in exercise of powers conferred by section 10 (1) (d) of the Industrial Disputes Act 1947, has referred the following dispute to this Tribunal for adjudication.

"(1) Whether the action of the management of M/s. Goa Antibiotics & Pharmaceuticals Ltd., Tuem, Pernem, Goa, in dismissing its Workman, Shri Shaikh Fairoz Ahmed, Assistant, with, with effect from 26-08-2003 is legal and justified?

(2) If not, to what relief the Workman is entitled to?"

2. On receipt of the said reference IT/35/05 was registered and notices were issued to both parties. In pursuance, the Party I/Workman appeared and filed his Claim Statement at Exb. 5. The Party II has filed written statement at Exb. 6. The rejoinder of the Party I is at Exb. 7.

3. The Party II is engaged in manufacturing medicines and pharmaceutical products and has its factory at Tuem, Pernem, Goa. The Party I was employed as Assistant (Finance and Accounts) at the Factory of Party II. The Party I was issued a charge-sheet dated 25-06-2002 for committing the following acts of misconduct:-

(1) Wilful insubordination or disobedience,

(2) Refusal to accept charge-sheet /communication from the company,

(3) Habitual absence without leave or absence without leave for more then eight consecutive days or overstaying the sanctioned leave without satisfactory explanation and

(4) Obtaining or trying to obtain leave under false pretext.

4. An enquiry was conducted in respect of the said charges. The Enquiry Officer submitted his findings dated 30-06-2003 wherein the Party I was held guilty of unauthorized absence/overstaying sanctioned leave without satisfactory explanation w.e.f. 13-04-2002 and trying to obtain leave under false pretext. Copy of the said report was furnished

to the Party I and he was called upon to tender his explanation. The Party I did not give any explanation. Hence, by notice dated 5-08-2003, the Party I was called upon to show cause against the proposed penalty of dismissal. The Party I did not give any reply to the said notice. Consequently, by dismissal order dated 26-08-2003, the Party II terminated the services of the Party I with immediate effect. Aggrieved by this the Party I raised an Industrial dispute. The Asstt. Labour Commissioner initiated Conciliation proceedings but the same concluded in failure. The Asstt. Labour Commissioner submitted the failure report on receipt of which the above-referred dispute is referred to this Tribunal for adjudication.

5. The Party I has claimed that sometime in February, 2002 his father became seriously ill with heart problems and was advised to undergo a bypass surgery at Mumbai. He applied for leave from 4-2-2002 for a period of 30 days to attend to his father. However, after availing leave for 6 days, he was informed that the operation of his father was postponed to March, 2002. Hence, he joined duty immediately on 13-2-2002 and applied for leave for 22 days from 28-2-2002. The bypass surgery of his father was performed in the month of March, 2002. The Party I has claimed that he and his mother were attending to his father in the hospital in Mumbai. However, his mother being a diabetic patient; fell ill and was hospitalized and as such, he had to attend to both parents. During this period, he made a short visit to Goa and sent telegram to the employer for extension of leave. The Party I has stated that he had not received letter or the intimation of letter dated 4-05-2002 as he was out of Goa and that he was not aware of the contents of the said letter.

6. The Party I has stated that the charges levelled against him are false and baseless. The Party I claims that the factory Manager had no authority to issue such charge-sheet and as such the charge-sheet is illegal. The Party I has further claimed that the Enquiry Officer appointed by Party II was biased and therefore the inquiry conducted by him stands vitiated. The Party I has claimed that the Inquiry Officer Shri S. K. Salgaonkar, had commenced the inquiry on 29-7-2002 and concluded on 23-10-2002. Instead of submitting the findings, the Inquiry Officer re-opened the inquiry and fixed it on 4-01-2003 for cross-examination of management witness and thereafter on 6-06-2003; the said Enquiry Officer disclosed that he is unable to continue the inquiry proceedings. Thereafter the Party II appointed Govind Tilve as an Enquiry Officer. The Party I has claimed that the act of re-opening of the enquiry and appointment of the Govind Tilve as an Enquiry Officer was totally illegal and without jurisdiction. Further, Shri Tilve had no authority to continue the inquiry from the time it was left by the earlier Inquiry Officer and therefore his proceedings stand vitiated. The Party I further claimed that the enquiry was conducted in breach of principles of natural justice. That Shri Tilve was biased and findings given by him are perverse. The Party I claims that he has served the Party II with honesty, devotion, and integrity. His past records are unblemished and that the penalty imposed on him is illegal, excessive, and severe. The Party I has therefore sought reinstatement with full back wages and continuity in service.

7. The Party II has claimed that the Party I was initially employed as an Assistant in finance and accounts at its factory at Tuem and thereafter he was transferred to Medicentre at Bambolim/ /Margao. By order dated 5-4-2002 the Party I was transferred from Medicentre, Margao to the plant at finance and accounts department. The duties of the Party I were to check up the sales bills on day-to-day basis and put up the same for computer feeding to determine the day-to-day sales and tally with the collections of the day. The work entrusted to the Party I was required to be completed on day-to-day basis and any delay would result in misuse of cash.

8. The Party I was sanctioned leave upto 12-4-2002. On expiry of leave, he was expected to join the work on 13-4-2002 at the plant since there was no leave balance in his account. The Party I did not join the duty on 13-4-2002. The Party I sought extension of leave even though he had no balance leave to his credit. By letter dated 4-05-2002, the Party I was informed about his unauthorized absence from 13-4-2002 and was called upon to give his explanation within 8 days as well as to join the duty immediately. The Party I failed to join duty so also to give any explanation. Therefore, charge-sheet dated 25-6-2002 was issued and forwarded at his Regd. Address. However, the Party I refused to accept the same. The enquiry was fixed on 11-7-2002 and on which day the Party I remained absent. The Inquiry Officer postponed the proceedings; from the next date i.e. 29-07-2002 the Party I attended the inquiry proceedings without fail. He was given full opportunity to defend himself. The Party II has claimed that since there were some discrepancies while recording the evidence, the Inquiry Officer

re-opened the inquiry and gave full opportunity to the Party I to cross-examine the Management Witnesses. The Party II has denied that the enquiry was conducted in violation of principles of natural justice. The Party II has also denied that the Enquiry Officer was biased or that the findings of the Enquiry Officer are perverse.

9. The Party II has stated that the copy of the report was duly served on the Party I but he failed to file his say. Subsequently a show cause notice dated 5-08-2003, on the proposed punishment of dismissal was served on the Party I but he failed to reply to such notice. Thereafter the Disciplinary Authority, after considering the past records of the Party I, imposed the punishment of dismissal. The Party II has denied that the order of dismissal is illegal or unjustified. The Party II has claimed that the Party I is not entitled for any relief.

10. Based on the aforesaid pleadings, the following issues were framed vide Exb. 7 and amended by order dated 23-04-2008.

1. Whether the inquiry held against the Party I is not fair and proper?

1A. Whether the charges against the Party I are proved to the satisfaction of the Tribunal?

2. Whether action of the Party II in dismissing the Party I from service w.e.f. 26-8-2003 is legal and justified?

3. Whether the Party I is entitled to the relief as prayed for?

4. What Award?

11. Issues No. 1 and 1A, which pertain to the fairness of the domestic inquiry and proof of charges levelled against the Party I, were considered as preliminary issues. Findings on the said issues have been given vide Party I Award/ /order dated 2-12-2010, wherein the inquiry has been held to be fair and proper and both the misconducts proved against the Party I are held to be proved to the satisfaction of the Tribunal. The question now is whether the punishment of dismissal was commensurate with the misconducts alleged and proved against the Party I. Both parties were called upon to adduce evidence on issues No. 2 and 3 which pertain to the proportionality of the punishment imposed on the Party I and the relief that he is entitled to. The Party I has filed his affidavit in evidence at Exb. 25. The Party II has examined its Asstt. Manager Shri Dattarraj Deshprabhu and has produced documents at Exb. 26 to 43 and 46 to 54, relating to the past conduct of the Party I.

12. Lnd. Adv. Shri Palekar has argued that the absence of the Party I was due to the sickness of his ailing parents. He has further argued that the Party II has not given any justification or reason for imposing harsh punishment of dismissal. Lnd. Adv. Shri Palekar has further argued that Party II had not suffered loss due to the absence of Party I. He further contends that the misconduct is not as serious as to warrant harsh punishment. He has argued that while imposing such harsh punishment, the Party II has not considered that the past records of the Party I were unblemished. He has relied upon the decisions of the Apex Court in the case of Chairman-cum-Managing Director, Coal India Ltd. v/s Mukul Kumar Chaudhary & ors. reported in 2009 III CLR 645, Scooter India Ltd. v/s Labour Court, Lucknow reported in AIR 1989 SC 149 and decision in the case of Ramakant Misra v/s State of UP reported in 1982 (45) F.L.R. 432.

13. Lnd. Adv. Shri P. J. Kamat has argued that long absence of any Workman without sanctioned leave prima facie shows lack of interest in the work and negligence in duties. Lnd. Adv. Shri P. J. Kamat has further contended that the past records of the Party I clearly show that the Party I was an undisciplined worker who was not interested in working. He has argued that the acts committed by the Party I are subversive of discipline and constitute gross misconduct for which dismissal is an appropriate punishment. He has relied upon the decisions of the Apex Court in the case of Delhi Transport Corporation v/s Sardar Singh reported in 2004 III CLR 289, L & T Komatsu Ltd. v/s N. Uday Kumar 2008 I CLR 978, and the decision of Bombay High Court in the case of Pandurang V. Kevne v/s BSNL (Telecom Factory), Mumbai & anr. reported in 2010 CLR 170. I have perused the records and considered the arguments advanced by the respective advocates and my findings on issues No. 2 & 3 are as under:

14. *Issue No. 3:* There is no dispute that Section 11A of the Industrial Dispute Act vests discretionary powers in the Tribunal to substitute the order of discharge or dismissal into an order of reinstatement or give such other relief to the Workman including the award of any lesser punishment, in lieu of discharge or dismissal as the circumstances of the case may require. However, it is well settled that these discretionary powers are to be exercised judiciously, within the parameters of law.

15. In this regard, it is advantageous to refer to the decision of the Apex court in the case of Mahindra & *Mahindra Ltd. V/s. N. B. Nawade 2005- I CLR 803,* wherein a three Judge Bench of the Apex Court after referring to the decisions in the case of U.P.S.R.T.C. v/s Subhash Chandra (AIR 2000 SC 1163) and Kailash Nath Gupta v/s Enquiry Officer (2003 II CLR 72) has held that- *"It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the Management where the concerned workman is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to herein above and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the Court, or the existence of any mitigating circumstances which requires the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment".*

16. In the case of *USV Limited v/s Maharashtra General Kamgar Union & another, reported in 1998(1) Bom.C.R. 604,* the Hon'ble Bombay High Court has summed up the scope of section 11-A as follows: *"…the power given to the Labour Court or Industrial Tribunal or National Tribunal in Section 11-A is not in the nature of unruly horse and cannot be exercised as an appellate forum over the findings given by the disciplinary authority. The power exercisable by the Labour Court or the Industrial Tribunal or the National Tribunal under Section 11-A cannot be exercised in an arbitrary manner or in a fanciful way or in a colour of capriciousness. …The exercise of the powers by the Labour Court or the Industrial Tribunal under Section 11-A has to be in the nature of the power that may be exercised by any supervisory authority but not as an appellate authority. The exercise of the power under Section 11-A therefore has to be within its frame work and should not exceed its power by passing arbitrary or fanciful orders. Jurisdiction of the Labour Court or of the Industrial Tribunal under Section 11-A though very wide yet not as wide as the appellate forum is always circumscribed by the power that may be exercised by supervisory authority. …The parameters within which such interference could be had by the Labour Court or Industrial Tribunal are the lack of good faith on the part of the employer, victimization or unfair labour practice of the employer, or where the management has been guilty of basic error of violation of principles of natural justice or whether the finding recorded by the Enquiry Officer is completely baseless or perverse on the face of the record before the Labour Court or the Industrial Tribunal. …The Labour Court or the Industrial Tribunal is expected to interfere with the decision of the management under Section 11-A only when it is satisfied that the punishment imposed by the management was highly disproportionate to the degree of the guilt of the workman concerned. The Industrial Court or the Labour Court therefore has to give reasons as to how the punishment imposed by the management is grossly disproportionate to the degree of the guilt."*

17. In the case of *Chairman cum Managing Director, Coal India Limited & Anr. v/s Mukul Kumar Choudhuri & Ors.,* (Supra), the Apex Court has held that *"the doctrine of proportionality is, thus, well recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in access to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review. One of the tests to be applied while dealing with the question of quantum of punishment would be: would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment."*

18. The principles which emerge from the aforesaid decisions and several other decisions of the Apex court and the High Court are that the Tribunal/Court has discretion to interfere with the punishment and alter the same. However, the discretion vested under Section 11-A of the Act has to be exercised judiciously; when the

punishment is either shockingly disproportionate to the gravity of misconduct and shocks the conscious of the Tribunal/Court or when there are other mitigating circumstances which require reduction of the sentence.

19. Hence, at the stage of deciding the legality or the quantum of the punishment, the question that falls for my consideration is whether the penalty imposed on the Party I is shockingly disproportionate to the charges levelled and proved and whether the Party I has shown existence of mitigating circumstances for exercise of discretionary jurisdiction.

20. It is not in dispute that the Party I was sanctioned leave till 12-4-2002, the Party I was to report for duty on 13-4-2002. Since the Party I did not report for duty, the Party II sent him a letter dated 4-5-2002, requiring him to report for work immediately. The Party I neither claimed the said letter nor reported for work. Hence, the Party I was issued charge-sheet dated 25-6-2002. An enquiry was held against the Party I. The Enquiry Officer has given his findings that the Party I is guilty of remaining unauthorizedly absent w.e.f. 13-4-2002 by overstaying his sanctioned leave without satisfactory explanation. The Inquiry Officer has also held the Party I guilty of trying to obtain leave under a false pretext.

21. As stated earlier, issues Nos. 1 and 1A have already been decided wherein it has been held that the Enquiry was conducted in compliance with the procedural requirements. The charges proved during the enquiry are held to be proved by acceptable evidence. As a result, while deciding the issue on the quantum of punishment, this Tribunal has to proceed on the basis that the charge of absenteeism stands proved. Consequently, Lnd. Advocate Palekar cannot be permitted to justify the absence of the Party I at this stage.

22. The first misconduct that has been proved against the Party I is of absence without leave. As regards the nature and gravity of the misconduct, in the case *of Delhi Transport Corporation* (supra), the Apex Court has held that *"When an employee absents himself from duty, even without sanctioned leave for very long period, it prima facie shows lack of interest in work. ...When an employee absents himself from duty without sanctioned leave the Authority can, on the basis of the record, come to a conclusion about the employee being habitually negligent in duties and an exhibited lack of interest in the employer's work. ...Habitual absence is a factor which establishes lack of interest in work. There cannot be any sweeping generalization. But at the same time some telltale features can be noticed and pressed into service to arrive at conclusions in the departmental proceedings".*

23. In the case of *L&T Komatsu Ltd. v/s N. Udaykumar (2008 I CLR 978),* the Apex Court has held that habitual absenteeism is a gross violation of discipline and that the Tribunal or the Labour Court is not justified in interfering with the quantum of punishment based on irrational or extraneous factors and certainly not on what it considers a compassionate ground.

24. In the case of *Pandurang Vithal Kavne v/s Bharat Sanchar Nigam 2010 CLR 170,* the Division Bench of the Bombay High Court has held that unauthorized habitual absence is a misconduct, which exhibits irresponsibility and lack of interest in work and devotion to duty.

25. The principles laid down in the aforesaid cases make it crystal clear that unauthorized absence or habitual absence is a gross misconduct and in the absence of mitigating circumstances, the Tribunal/Court cannot interfere with the punishment of dismissal. In the instant case, the Party I has deposed that the incident of the absenteeism, which is the subject matter of the charge-sheet, was the first incident of his kind during the entire tenure of his service with the Party II Company. He has further deposed that considering that the past records of the Party I were unblemished, the Party II was not justified in imposing severe punishment of dismissal, which according to him is shockingly disproportionate to the nature of the misconduct.

26. As regards the past conduct, the Party I has admitted in his cross-examination that working hours at the factory were from 9:00 hrs to 17:30 hrs and that the attendance was marked by clock stamping. The Party I has admitted that the attendance card at Exb. 26 colly. shows that on almost every day he had reported for duty after 9:00 a.m. The Party I has also admitted that he was issued memo dated 24-7-1989 (Exb. 27) for late attendance on every Monday and on the days following holidays. The Party I has also admitted that he was issued memo dated 9-9-1992 (Exb. 28) for unauthorized absence from duties from 2-9-1992.

27. The Party I has also admitted that he had received the show cause notice dated 5-07-1995 (Exb. 31) whereby he was called upon

to explain why disciplinary action should not be initiated against him for habitual late coming. The Party I had filed reply to the said notice, which is at Exb. 32, wherein the Party II had challenged the legality of the said notice. The Party I has admitted that in the notice and reply at Exb. 31 and 32 respectively there is reference to letter dated 6-6-1995. The Party I has admitted having received the said letter dated 6-6-1995(Exb. 33) wherein the details of late attendance were brought to his notice and he was informed that the same constitutes serious act of indiscipline and amounts to gross misconduct.

28. The Party I has also admitted that he was issued suspension order dated 28-7-1995 (Exb. 34) whereby he was suspended for two working days i.e. on 2-8-1995 and 3-08-1995 as a penalty for habitual late reporting. The Party I has admitted that he had preferred an appeal dated 1-08-1995 (Exb. 35) against the order of suspension. A perusal of the appeal memo at Exb.35 indicates that the Party I had not specifically denied that he was reporting late. He had claimed that he was provided official residence and transport. He had stated that there was no residential accommodation near the factory and that public transport was erratic. The Party I had claimed that since the month of July, 1995, he had started residing at Pernem and since then he had tried to give satisfactory performance. This in my view is a tacit admission of late attendance.

29. The Party I has admitted that he was issued Memo dated 12-4-1995 (Exb. 29) for slapping one employee by name Anil Sawant in the Factory premises. The Party I has also admitted that he was issued notice dated 18-9-1996 (Exb. 36). By this notice the Party I was called upon to show cause as to why disciplinary action should not be taken against him for acts of misconducts such as leaving the work place without permission, disturbing the other employees and reading story books, newspaper during working hours and taking more than official time allowed for tea and lunch break.

30. The Party I has also admitted that he was issued show cause notice dated 20-09-1996 (Exb. 37) for breaking the door of Bonded stock room. The Party I has admitted that he was issued show cause notice 25-9-1996 (Exb. 38) for leaving the place of work without permission. He has also admitted that on the same day he was issued two other letters at Exb. 39 colly. for not accepting the written communication issued by the company. The Party I was informed that the act of not accepting the written communication of the company is a serious act of indiscipline.

31. The Party I has also admitted that the order dated 10-10-1996, he was given punishment of one day suspension for the acts of indiscipline. On the same date, he was issued another order of punishment of suspension for one day on 14-10-1996. The said orders are produced at Exb. 40 colly. The Party I has admitted that he was issued charge-sheet dated 28-09-1996 (Exb. 41) for committing acts of misconduct referred in the show cause notice dated 18-9-1996 (Exb. 36).

32. The Party I has admitted that he was issued show cause notice dated 18-11-1996 for leaving the work place even when the permission to leave the work place was refused. The Party I has admitted that on the same date he was issued another notice for late attendance. The said notices are at Exb. 42 colly. The Party I has also admitted that he was issued two show cause notices both dated 20-12-1996 (Exb. 43 colly.) wherein it was alleged that the Party I had conducted serious acts of indiscipline such as encroaching in other section without prior permission, riotous/ /disorderly behaviour, use of abusive language, absence from work place during working hours etc. The Party I has also admitted that he was issued show cause notice dated 23-9-1997 (Exb. 44) for obtaining leave by manipulation and misrepresentation.

33. In addition to the aforesaid notices/memos, which were admittedly received by the Party I, the witness for the Party II Shri Dattaraj Deshprabhu has produced notices/memos at Exb. 46 to 56, issued to the Party I for the various acts of indiscipline. The witness Shri Dattaraj Deshprabhu has given details of the incidents, which necessitated the Party II to issue these notices/memos to the Party I.

34. The aforesaid documentary evidence produced by the Party II speaks volumes about "unblemished past records" of the Party I. The said documentary evidence not only belies the contention of the Party I that his past records have been very clean but it proves that the Party II had given several opportunities to the Party I to rectify his behaviour despite which the Party I had continued to be a habituated undisciplined worker.

35. Now coming to the judgments relied upon by Lnd. Adv. Palekar, it is to be noted that in the case of *Chairman-cum-Managing Director, Coal India Ltd.* (supra), the workman had overstayed sanctioned leave for a period of six months. Nevertheless, upon being charged for such misconduct he had admitted his guilt and explained that his absence was not intentional but was beyond his control and in fact, he had sent

his resignation, which was not accepted. Under the said circumstances, the Apex Court has held that the punishment of removal was unduly harsh and disproportionate to the charges levelled.

36. In the case of *Scooter India Ltd.* (supra), the order of termination was substituted by an order of reinstatement together with 75% back wages, to give an opportunity to the workman to reform himself and prove to be a loyal and disciplined employee of the Company. Similarly in the case of Ramakant Mishra (supra) the punishment of dismissal from service was reduced withholding two increments since the Workman had no blame worthy misconduct during 14 years of service.

37. The facts of the above-mentioned case are entirely different from the facts and circumstances. It is to be noted that in the instant case, the Party I is not only held guilty of an isolated charge of unauthorized absence but is also held guilty of trying to obtain leave under false pretext. Such conduct clearly amounts to breach of discipline and being an act subversive of discipline, constitute a grave misconduct. The material on record also proves that the past conduct of the Party I was far from being satisfactory. The Party I was given several opportunities to reform himself but there was no improvement in his conduct. On considering the nature and gravity of the proved misconduct and the past blameworthy record of the Party I with no extenuating circumstance established, in my opinion the punishment imposed on him cannot be considered as unduly harsh or disproportionate as to shock the conscience of the court, nor can it be said to be unjustified or illegal.

38. It is also to be noted that in his evidence before this Tribunal the Party I has deposed that he is 44 years old and that due to his advanced age he has been unable to secure a job. He has further deposed that he has to maintain himself and his old parents. He takes up jobs on daily wages and on an average he is earning Rs. 1500/- per month. The Party I has that he is suffering great hardships since the time of his dismissal.

39. The ground of hardship or inability to secure a new job cannot be considered as a mitigating circumstance to warrant interference. It is well settled that Section 11-A of the Act does not vest the Tribunal with benevolent powers to safeguard the future career of the Workman on the ground that he is in his middle ages and has difficulty in securing a new job. More particularly, when the workman is involved in committing serious acts of misconduct and his past record is dismal. The contention that the Party II has not suffered any loss is also devoid of merits as such grave misconduct affects the effective functioning of the company and the discipline at the workplace. Hence, in my considered view, an employer cannot be faulted in getting rid of the incorrigible employees who lack devotion in duty or decide to stay away from their work irresponsibly despite being warned or penalized but would be fully justified in filling those posts with more worthy candidates. Such drastic action would be essential in the interest of the organization as well as that of its employees.

40. It is also pertinent to note that there are no such pleadings/averments in the claim statement or the rejoinder, which were filed about three years after the date of the termination. The evidence, which is beyond the pleadings, cannot be looked into and the quantum of punishment cannot be interfered with on such extraneous factors. In my considered view, interfering with the punishment on such compassionate ground, will amount to capricious and arbitrary exercise of power.

41. Under the circumstances and in view of the discussion supra, the punishment of dismissal cannot be considered as disproportionate, harsh, illegal, and unjustified. Hence, the issue No. 3 is answered in the negative.

42. *Issue No. 3:* The Party I is held guilty of habitual unauthorized absence and trying to obtain leave on false pretext. There are no mitigating circumstances to interfere with the penalty imposed against the Party I. Hence, the Party I is not entitled for any relief. Issue No. 5 is answered accordingly.

Under the circumstances and in view of discussion supra, I pass the following order.

ORDER

1. The action of the management of M/s. Goa Antibiotics and Pharmaceuticals Ltd., Tuem, Pernem, Goa, in dismissing its Workman, Shri Shaikh Fairoz Ahmed, Assistant, with, with effect from 26-08-2003, is legal and justified.

2. The Party I is not entitled for any relief.

Inform the Government accordingly.

Sd/-
(A. Prabhudessai),
Presiding Officer,
Industrial Tribunal-
-cum-Labour Court-I.

Notification

No. 28/1/2011-LAB

The following award passed by the Industrial Tribunal-cum-Labour Court, at Panaji-Goa on 19-07-2011 in reference No. IT/123/99 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 9th November, 2011.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT PANAJI

(Before Smt. Anuja Prabhudessai, Hon'ble Presiding Officer)

Ref. No. IT/123/99

Shri Ratnakant Shanker Kudnekar,
Rep. by the President Goa Trade
and Commercial Workers Union,
Velho Bldg., 2nd Floor,
Panaji-Goa. ... Workman/Party I

V/s

M/s. P. J. Thomas Rubber Farm,
Gawas Wada, Khatode,
Valpoi, Satari-Goa. ... Employer/Party II

Workman/Party I represented by Adv. Shri Suhas Naik.

Employer/Party II represented by Adv. Shri M. P. Sawaikar.

AWARD

(Passed on this 19th day of July, 2011)

By order dated 28-09-1999, the Government of Goa, in exercise of powers conferred by Section 10 (1) (d) of the Industrial Disputes Act 1947, has referred the following dispute to this Tribunal for adjudication.

"(1) Whether the action of the management of M/s. P. J . Thomas Rubber Farm, Gawas Wada, Khatode, Valpoi, Satari-Goa in refusing employment to Shri Ratnakant Shankar Kudnekar, with effect from 16-11-1998, is legal and justified?

(2) If not, to what relief the Workman is entitled?"

2. The reference was registered under No. IT/123/99 and notices were issued to both parties. In pursuance, the parties put in their appearance. The Workman/Party I (hereinafter referred to as Party I) filed Statement of Claim at Exbt. 3. The Employer/Party II (hereinafter referred to as Party II) has filed written statement at Exb. "4". The rejoinder of the Party I is at Exb. 5.

3. The Party I claims that he was employed with Party II Rubber Farm since 1985, on monthly salary of Rs. 2000/- (Rupees two thousand only). The Party I has stated that his services included activities like planting rubber plants, maintaining and manuring rubber trees. The said work was of continuous nature so his services were engaged continuously and on regular basis throughout the year.

4. The Party I has claimed that he was refused employment from 16-11-1998 without assigning any reasons. The Party II did not consider his request to permit him to resume duties and as such, he raised an Industrial Dispute dated 19-1-1999. The Asst. Labour Commissioner, Mapusa, issued notice to the Party II. The Party II filed its reply wherein the Party II alleged that the Party I was employed as a casual labour on daily wages and that he had stopped reporting for work. The conciliation proceedings ended in failure. The Conciliation Officer submitted the failure report to the Government, and on receipt of the report, the Government has referred the above dispute to this Tribunal for adjudication.

5. The Party I has claimed that he has worked for Party II continuously from 1985 till the date of his termination on 16-11-1998. The Party I has claimed that his past records are unblemished. The Party I has stated that the action of the Party II in refusing employment to him is in contravention of Section 25F of the Act and is illegal and unjustified. The Party I has therefore sought reinstatement with full back wages and continuity in service.

6. The Party II has denied that the Party I was employed on regular basis on monthly salary of Rs. 2000/- or that he was in continuous services. The Party II has claimed that the rubber plantation does not require regular work/maintenance. The Party II has claimed that manuring of rubber plant is done at the beginning and end of monsoons and hence casual labourers are engaged only during the beginning and end of monsoon season. The Party II has claimed that the Party I was engaged for manuring the rubber trees during the

beginning and end of monsoon season. The Party I was engaged as a casual labourer as and when this was need for maintenance of rubber plantation. The Party I was paid daily wages from time to time. The Party II has stated that in the beginning of monsoon season in 1996, the Party I was called for manuring rubber plants. However, the Party I did not report for work and on inquiring the Party II learnt that the Party I was arrested by Valpoi Police and a charge-sheet was filed against him before JMFC, Valpoi. The Party II has claimed that the Party I has not worked in the rubber farm since June, 1996. The Party II has therefore claimed that there was no question of refusing employment to the Party I w.e.f. 16-11-1998 or controverting provisions of Section 25F of the Industrial Disputes Act, 1947. The Party II has claimed that the Party I is not entitled for any relief.

7. Based on the aforesaid pleadings the following issues were framed:

1. Whether the Party I proves that he was employed with the Party II since January, 1985 on salary of Rs. 2000/- per month?
2. Whether the Party I proves that he was refused employment by the Party II from 16-11-1998?
3. Whether the Party I proves that the action of the Party II in refusing employment to him with effect from 16-11-1998, is illegal and unjustified?
4. Whether the Party I is entitled to any relief?
5. What Award?

8. Both parties have adduced oral as well as documentary evidence. The Party I has examined himself whereas P. J. Thomas, the proprietor of Party II Rubber Plantation, has filed his affidavit in evidence. The Party II has also examined one Shri Aristotle Valadaries.

9. Lnd. Adv. Shri Suhas Naik argued on behalf of Party I. He has argued that the Party II has admitted that he had employed Party I and it is the case of the Party II that the Party I had abandoned the job. Lnd. Adv. Shri S. Naik has argued that the Party II had not issued any notice to Party I to report for work. The Party II has also not produced any document to show that the Party I was working as a daily wager and in the absence of such evidence, an inference has to be drawn that the Party I was a regular employee of the Party II.

10. Lnd. Adv. Shri Tari has filed written arguments on behalf of the Party II. He has argued that the evidence adduced by the Party II amply proves that the services of the Party I were engaged only during the beginning of the rainy season. He has further argued that Party I has admitted that he was arrested by Valpoi Police in a criminal case and from this it is evident that the Party I had himself failed to report for work because of his arrest. Lnd. Adv. Shri Tari had further argued that Party I has not adduced any evidence to show that he had reported to work after he was released from jail. Lnd. Adv. Tari contents that Party I has failed to discharge the burden cast on him and as such, he is not entitled for any relief.

11. I have perused the records and considered the arguments advanced by the Lnd. advocates for the respective parties and my findings on the aforestated issues are as under:

12. *Issue No. 1:* The Party II is a Rubber Farm, situated at Gawas Wada, Satari. The Party I has claimed that he was in regular employment of the Party II since January, 1985, on monthly salary of Rs. 2000/-. The Party II has claimed that his services were engaged for carrying out activities like planting, maintaining and manuring rubber trees. The Party I had stated that the said work was of continuous nature and that his services were engaged throughout the year.

13. It may be mentioned that the Party II has not disputed having employed Party I as a labourer. However, the Party II has denied that the Party I was a regular monthly salaried employee. The Party II has claimed that the Party I was employed as a daily wager, as and when required during the beginning and end of monsoon season. In the light of these rival pleadings, the question that falls for my determination is whether the Party I was in regular and continuous employment since January, 1985, on monthly salary of Rs. 2000/- and that the Party II had discontinued his service in November, 1998.

14. The Party I has deposed that he was working in Party II Rubber Farm as a labourer since 1985. He has deposed that he used to do work like watering the plants, digging the ground for planting saplings, planting and manuring the plants/trees etc. The Party I has further deposed that the work of digging the ground for planting new saplings is done in the rainy season and that the new saplings and plants are planted during the rainy season. The Party I has further deposed that the plants were watered and manured in the month of April/May.

15. It is pertinent to note that the evidence of the Party I indicates that he was doing the work of planting, watering and manuring the plants/ /trees. This work was done only in the month of April/May and during the rainy season. Even though the Party I has stated that he was working continuously throughout the year, he has not specified either in the claim statement or in his evidence, the nature of work done by him during the rest of the year. It is also pertinent to note that though the Party I has deposed that about 10-15 other persons were working along with him, he has not examined any of these persons. Though the Party I has deposed that his attendance was marked on a register by a supervisor, he has not given the name of the supervisor and has not examined the said supervisor. Though the Party I has deposed that he was paid wages in cash and his signature was obtained on a wage register, he has not called upon the Party II to produce the said registers. In short, there is absolutely no evidence either oral or documentary to corroborate the evidence of the Party I and or to prove that he was working for the Party II throughout the year on the contrary the evidence of the Party I proves that the work was seasonal.

16. It is also pertinent to note that the evidence of P. J. Thomas, the proprietor of Party II, clearly indicates that the rubber plantation does not need constant caretaking. He has deposed that the work like planting new plants, manuring plants etc. is done in the beginning of the monsoon. This work is done by engaging casual labourers. Shri P. J. Thomas has deposed that sometimes in the beginning of the rainy season he used to engage the Party I as a casual labourer for manuring the rubber trees. The evidence of P. J. Thomas is also corroborated by Aristotle Valadares who is a proprietor of neighbouring rubber plantation. This witness has also deposed that the rubber plantation does not require regular maintenance. He has deposed that manuring and other maintenance work of the rubber plantation is done in the beginning of the monsoons. He has deposed that he had seen the Party I manuring the trees of the Party II and that the Party II used to sometimes engage him to do minor works in the rubber plantation.

17. Shri P. J. Thomas has also stated that making of rubber sheets is seasonal. The season starts after the monsoon and ends sometime in the month of April, with a break of two and a half month in between. Both these witnesses have stated that the work of collecting and processing sap is done by the skilled tappers and that they used to engage the same four skilled tappers to collect and process the sap. Shri Aristotle Valadares has deposed that the Party I was not a skilled workman. This evidence which has gone unchallenged clearly indicates that the services of the Party I were not engaged for collecting and processing sap or making rubber sheets. Even otherwise the pleadings as well as the evidence of the Party I does not indicate that he was doing the work of collecting and processing sap or making rubber sheets. In fact, the evidence of the Party I supports the case of the Party II that he was only planting, manuring and watering the plants and this work is done in the month of April-May and in the beginning of the monsoons. The Party I has therefore failed to prove that his services were required throughout the year and that he was employed on regular basis on monthly salary of Rs. 2000/. Hence, the issue No. 1 is answered in the negative.

18. *Issue Nos. 2 & 3:* The Party I claims that he was refused employment by the Party II from 16-11-1998. The Party I has claimed that his termination is in contravention of Section 25 F of the Act and hence is illegal and unjustified. Whereas the Party II has denied that the Party I was in continuous service. The Party II has also denied having terminated services of the Party I. The Party II has stated the Party I had not reported for work after his arrest by Valpoi Police in a criminal case in June, 1996.

19. Before adverting to the facts of the case, it advantageous to consider the principles laid down by the Apex Court in the following decisions wherein the position of law relating to the onus to be discharged has been delineated.

20. In the case of *Range Forest Officer v. S.T. Hadimani, 2002 (3) SCC 25,* it was held as follows: *"In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a Workman had, in fact, worked for 240 days in a year."*

21. In *Manager, Reserve Bank of India, Bangalore v. S. Mani and Ors., 2005(5) SCC 100,* a three-Judge Bench of Apex Court held that the initial burden of proof was on the workman to show that he had completed 240 days of service. Tribunal's view that the burden was on the employer was held to be erroneous.

22. In *Batala Cooperative Sugar Mills Ltd. v. Sowaran Singh, 2005 (7) Supreme 165,* it was held as follows: *"So far as the question of onus regarding working for more than 240 days is concerned, as observed by this Court in Range Forest Officer v. S.T. Hadimani, [2002 (3) SCC 25] the onus is on the Workman."*

23. In *R. M. Yellatti v. The Asst. Executive Engineer [JT 2005 (9) SC 340],* a three Judge Bench of the Apex Court after considering various decisions on the issue has held as follows:- *"Analyzing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the Workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the Workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self--serving statements made by the claimant/ Workman will not suffice in the matter of discharge of the burden placed by law on the Workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."* This position of law is once again reiterated by the Apex Court in *Krishna Bhagya Jala Nigam Ltd. v/s Mohammed Rafi [2009 (11) SCC 522].*

24. In the light of the principles laid down by the Apex Court, the question, which falls for consideration, is whether the Party I has discharged the initial burden of proving that he had worked for 240 days in the year preceding his termination and whether his services are retrenched in contravention of Section 25F of the Act.

25. It is the case of the Party I that he was in regular employment from 1985 till 16-11-1998. As stated earlier, the Party I has not examined any witness or produced any documentary evidence to support this contention. The Party I has also not called upon the Party II to produce the attendance or wage register. Apart from his bare statement, the Party I has not adduced any cogent evidence, either oral or documentary, to prove that he was a regular employee from 1985 till 15-11-1998 and that the Party II had refused employment to him on 16-11-1998.

26. Per contra, the evidence adduced by the Party II amply proves that the Party I was a daily wage employee and his services were engaged as and when required during the rainy season. The evidence of P. J. Thomas clearly indicates that sometime in the beginning of monsoons in the year 1996, he had called the Party I to do manuring work. However despite repeated requests the Party I had not reported for work and on inquiries he had learnt that the Party I was arrested by Valpoi Police in a criminal case. The Party II has produced copies of the charge-sheet, copy of the FIR lodged by Prabhawati Melekar and her deposition before JMFC Valpoi, and the judgment in criminal case 34/S/1997. A perusal of these documents indicates that pursuant to the complaint lodged by Prabhawati Melekar, the Party I was arrested by Valpoi Police and subsequently charge-sheeted for kidnapping the daughter of said Prabhawati. Shri Aristotle Valadares has also deposed that sometime in the year 1996, he had read the news of arrest of Party I and thereafter he had not seen him working in the rubber plantation of P. J. Thomas. This evidence sufficiently proves that there was no refusal of employment as alleged by the Party I.

27. It may be mentioned that in the case of Gangaram Medekar (supra) the employee was in regular employment for twenty years. His services were orally terminated on the ground of misconduct after the employee had complained to the Government Labour Officer; the Company had

alleged that the employee was not interested in his work without due process of law. It was held that if it was a case of word against word, then services of the workman cannot be terminated and reinstatement cannot be refused primarily because the onus lies on the Company to prove that the Workman had voluntarily abandoned his service.

28. In the instant case, the evidence on record amply proves that the Party I was a daily wage employee whose services were engaged mainly in the beginning of monsoon. The evidence of P. J. Thomas, which is also corroborated by Aristotle Valadares, also proves that the Party I had not reported for work since the time of his arrest in the year 1996. The evidence adduced by the Party II is sufficient to negate the story of termination of service on 16-11-1998.

29. To sum up, the Party I has failed to prove that the Party II had refused employment to him w.e.f. 16-11-1998 or that he had actually worked for the Party II for 240 days in the year preceding his termination. Thus, the Party I has failed to prove that he was in continuous service within the meaning of Section 25B of the Act and that his services were retrenched in contravention of the provisions of Section 25F of the Act. Hence, issues 2 & 3 are answered in the negative.

30. *Issue No. 4:* The Party I has failed that he was in continuous service and that his services are terminated in contravention of Section 25F of the Act. Hence, the Party I is not entitled for any relief. Issue No. 4 is answered accordingly.

Under the circumstances and in view of discussion supra, I pass the following order.

ORDER

1. It is held that the management of M/s. P. J. Thomas Rubber Farm, Gawas Wada, Khatode, Valpoi, Satari, Goa has not refused employment to Shri Ratnakant Shankar Kudnekar, with effect from 16-11-1998 and has not terminated his services illegally or in contravention of the provisions of Industrial Disputes Act, 1947.
2. The Workman Shri Ratnakant Shankar Kudnekar is not entitled for any relief.

Inform the Government accordingly.

Sd/-
(A. Prabhudessai),
Presiding Officer,
Industrial Tribunal-
-cum-Labour Court-I.

Department of Law and Judiciary

Law (Establishment) Division

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Order

No. 5-40-93/LD(1)/1843

Whereas the Government vide Notification No. 5-40-93/LD(1) dated 21-04-1994, published in the Official Gazette, Series II No. 14 dated 07-07-1994, appointed Advocate Shri Menino Patrick Diniz as a Notary for a period of three years in Quepem and Sanguem areas with effect from 21-4-1994 (hereinafter called as the "Applicant");

And whereas the Government vide Certificate of Practice No. 5-40-93/LD&(1) dated 21-4-1994 has issued Certificate stating that the Applicant is authorized to practice as a Notary for a period of 3 years from 21-04-1994, for Quepem and Sanguem areas;

And whereas the Government has renewed the said Certificate of Practice No. 5-40-93/LD(1) dated 21-4-1994, for further period of 3 years with effect from 21-4-1997, for Quepem and Sanguem areas on 18-09-1997;

And whereas the Government vide Endorsement No. 5/40/93-LD(1) has further renewed the said Certificate of Practice No. 5-40-93/LD(1) dated 21-4-1994, for a period of five years with effect from 21-4-2000, for the area of Quepem and Sanguem jurisdiction;

And whereas the Government vide Endorsement No. 5/40-93/LD(1) dated 09-08-2005 has further renewed the said Certificate of Practice No. 5-40-93/LD(1) dated 21-4-1994, for a period of five years with effect from 21-4-2005, for the area of Quepem and Sanquem jurisdiction;

And whereas the Government vide Certificate of Practice No. 5-40-93-LD(1) dated 13-02-2006 has extended the jurisdiction of practice of the Applicant from the area of Quepem and Sanguem jurisdiction to South Goa District;

And whereas the period of validity of the Certificate of Practice issued to the Applicant expired on 21-04-2010;

And whereas the State Registrar-cum-Head of Notary Services vide letter No. 3/7(51)/08--Registration/414 dated 16-02-2010 has forwarded a complaint dated 18-01-2010 in form XIII filed by one Shri Michael G. Fernandes, r/o House No. 28/B, Taripanto, Sanguem-Goa against the Applicant to the Government;

And whereas the Government vide letter No. 5-40-93/LD(1)/413 dated 15-03-2010 has directed the State Registrar-cum-Head of Notary Services to hold an inquiry into the said complaint against the Applicant under the Notaries Act and Rules;

And whereas an inquiry was accordingly conducted by the State Registrar-cum-Head of Notary Services and an Inquiry Report was submitted to the Government vide his Note No. 3/7/11-Registration/1565 dated 20-09-2011;

And whereas the State Registrar-cum-Head of Notary Services vide its Inquiry Report has made conclusion that except loss of revenue to the Government towards the Notarial Stamps nobody is being perjudicially affected by irregularities being committed by the Applicant and has proposed to drop the proceedings and let off the Applicant with a warning not to repeat such irregularities in future in view of Rule 13(12)(b)(iii) of the Notaries Rules, 1956;

And whereas, the Government after considering the Inquiry Report has agreed to drop the proceedings filed against the Applicant and let off the Applicant with the warning not to commit such irregularities in future and if indulged in future, stern action would be taken inviting disqualification as a Notary public;

Now, therefore, in pursuance of Rule 13(12)(b)(iii) of the Notaries Rules, 1956, the Government of Goa hereby warns the Applicant not to commit such irregularities in future and if indulged in future, stern action would be taken inviting disqualification as a Notary Public.

By order and in the name of the Governor of Goa.

Pramod V. Kamat, Law Secretary.

Porvorim, 15th November, 2011.

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Department of Personnel

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Order

No. 6/2/2002-PER(Part)

The Governor of Goa is pleased to order transfer and posting of the following Junior Scale Officers of Goa Civil Service, with immediate effect, in public interest.

Sr. No.	Name of the Officers	Present posting	Transferred/ /posted as
1	2	3	4
1.	Shri Pandharinath N. Naik	Under Secretary (Revenue-I)	Administrative Officer, Hospicio Hospital, Margao thereby relieving Shri Shivaji B. Dessai, Chief Officer, Cuncolim Municipal Council of the additional charge.
2.	Smt. Madhura V. Naik	Project Officer, District Rural Development Agency, North	Deputy Director (Admn.), Institute of Psychiatry & Human Behaviour, Bambolim.
3.	Smt. Siddhi T. Halarnkar	Deputy Director (Admn.), Water Resources Department	Deputy Collector (Rent Control) Mapusa.
4.	Shri Narayan M. Gad	Deputy Director (Panchayats), North	Under Secretary (Home-I)
5.	Smt. Vitoria Irene Sequeira	Deputy Director (Admn.) (Women & Child Development)	Deputy Director (Admn.), Water Resources Department with additional charge of the post of Administrator of Comunidade, Bardez.
6.	Shri Parag M. Nagarcenkar	Chief Officer, Curchorem-Cacora Municipal Council	Under Secretary (Revenue-II).
7.	Smt. Catherine Fernandes	Deputy Director (Admn.), Institute of Psychiatry & Human Behaviour, Bambolim	Deputy Director (Admn.) (Women & Child Development).

1	2	3	4
8.	Smt. Darshana S. Narulkar	Under Secretary (Home-I)	Deputy Director (Admn.), Food & Drugs Administration Department.
9.	Smt. Neela S. Dharwadkar	Under Secretary (Revenue-II)	Under Secretary (Revenue-I).

Shri Prashant P. Shirodkar, Chief Officer, Quepem Municipal Council shall hold charge of the post of Estate Officer, Salaulim Irrigation Project, thereby relieving Shri Parag M. Nagarcenkar, of the additional charge, in addition to his own duties, with immediate effect and until further orders.

Shri Shivaji B. Dessai, Chief Officer, Cuncolim Municipal Council, shall hold charge of the post of Chief Officer, Curchorem-Cacora Municipal Council, in addition to his own duties, with immediate effect and until further orders.

By order and in the name of the Governor of Goa.

Umeshchandra L. Joshi, Under Secretary (Personnel-I).

Porvorim, 14th November, 2011.

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Order

No. 4/26/88-PER

Read: Government Order No. 4/26/88-PER dated 28-07-2011.

The ad hoc promotion of Dr. Celsa Pinto, to the post of Director of Education is hereby further extended for eight months with effect from 01-04-2011 to 30-11-2011.

This issues with the approval of the Goa Public Service Commission vide its letter No. COM/II/11/ /15(1)/94-05/Vol.III/1321 dated 08-11-2011.

By order and in the name of the Governor of Goa.

Umeshchandra L. Joshi, Under Secretary (Personnel-I).

Porvorim, 17th November, 2011.

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Department of Public Health

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Order

No. 22/6/2003-I/PHD

Read: 1) Order No. 22/6/2003-I/PHD dated 04-12-2008.
2) Order No. 22/6/2003-I/PHD dated 30-06-2010.
3) Order No. 22/6/2003-I/PHD dated 17-08-2010.

Government is pleased to extend the contract appointment of Dr. Satendra Dessai, Consultant Neurosurgeon at Hospicio Hospital, Margao under Directorate of Health Services, Panaji for a further period of one year w.e.f. 21-11-2010 to 20-11-2011 on monthly emoluments of ` 55,000/- (Rupees fifty five thousand only) subject to the terms and conditions contained in his agreement dated 14-10-2011 executed by him with the Government.

By order and in the name of the Governor of Goa.

Paula Fernandes, Under Secretary (Health-II).

Porvorim, 16th November, 2011.

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Department of Revenue

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Order

No. 22/20/2010-RD

Whereas, the Government of Goa, vide Notification No. 22/20/2010-RD dated 17-06-2010, issued under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (Act 1 of 1894) (hereinafter referred to as the "said Act"), and published in the Official Gazette, Series II No. 13 dated 24-06-2010, notified that the land specified in the Schedule thereof (hereinafter referred to as the "said land") is likely to be needed for public purpose viz. Land Acquisition for development of Government Village School Playground at St. Estevam in Tiswadi Taluka (hereinafter referred to as the "said public purpose");

And whereas, the Government of Goa considered the report made by the Collector under sub-section (2) of Section 5A of the said Act and on being satisfied that the said land is needed for the said public purpose, vide Notification No. 22/ /20/2010-RD dated 22-09-2011, issued under Section 6 of the said Act, and published in the Official Gazette, Series II No. 26 dated 29-09-2011, declared that the said land is required for the said public purpose.

Now, therefore, in exercise of the powers conferred by Section 7 of the Land Acquisition Act, 1894 (Act 1 of 1894), the Government of Goa hereby

directs the Collector, North Goa District, Panaji, Goa to take the order for acquisition of the said land.

By order and in the name of the Governor of Goa.

Pandharinath N. Naik, Under Secretary (Rev-I).

Porvorim, 15th November, 2011.

Notification

No. 23/5/2010-RD

Whereas it appears to the Government of Goa (hereinafter referred to as "the Government") that the land specified in the Schedule hereto (hereinafter referred to as the "said land") is likely to be needed for public purpose, viz. Land Acquisition for const. of 4 lane road including Geometric Improvement from Chicalim junction to Airport at Dabolim under Cortalim Constituency.

Now, therefore, the Government hereby notifies under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act") that said land is likely to be needed for the purpose specified above.

2. All persons interested in the said land are hereby warned not to obstruct or interfere with any surveyor or other persons employed upon the said land for the purpose of the said acquisition. Any contract for the disposal of the said land by sale, lease, mortgage, assignment, exchange or otherwise or any outlay commenced or improvements made thereon without the sanction of the Collector appointed under paragraph 4 below, after the date of the publication of this notification, will under clause (seventh) of Section 24 of the said Act be disregarded by him while assessing compensation for such parts of the said land as may be finally acquired.

3. If the Government is satisfied that the said land is needed for the aforesaid purpose, a declaration to that effect under Section 6 of the said Act will be published in the Official Gazette and in two daily newspapers and public notice thereof shall be given in due course. If the acquisition is abandoned wholly or in part the fact will also be notified in the same manner.

4. The Government further appoints under clause (c) of Section 3 of the said Act, the Deputy Collector & SDO, Mormugao-Goa to perform the functions of a Collector, under the said Act in respect of the said land.

5. The Government also authorizes under sub-section (2) of Section 4 of the said Act, the following Officers to do the acts, specified therein in respect of the said land.

1. The Collector, South Goa District, Margao-Goa.
2. The Deputy Collector & SDO, Mormugao-Goa.
3. The Executive Engineer, W.D. VI (R-S), PWD, Fatorda, Margao-Goa.
4. The Director of Settlement and Land Records, Panaji-Goa.

6. A rough plan of the said land is available for inspection in the Office of the Deputy Collector & SDO, Mormugao-Goa for a period of 30 days from the date of publication of this Notification in the Official Gazette.

SCHEDULE

(Description of the said land)

Taluka: Mormugao *Village:* Chicalim

Survey No./ /Sub-Div. No.	Names of the persons believed to be interested	Approx. area in sq. mts.
1	2	3
162/1 p O:	1) Comunidade of Chicalim. 2) Director of Animal Husbandary & Vaterinary Services.	1575
85/1 p O:	1) Comunidade of Chicalim. 2) Fregrendo Alex Nunes.	17400
84	1) Comunidade of Chicalim.	1965
125(A)29	Mauro Ponciano Gerson Rebelo.	47
125(A)30	Smt. Jyotsna Dilip Dhuru.	72

Boundaries :

Village: Chicalim
North : Road.
South : Railway line.
East : S. No. 91/1, 2, 3, 4, 5, 85/1.
West : S. No. 162/1, 4, 84/0, Boundary of Vasco City.

Boundaries :

Village: Vasco da Gama
North : Road.
South : Road.
East : Road.
West : P. S. No. 125A/28, 125A/7.

Grand Total: 21056

By order and in the name of the Governor of Goa.

Pandharinath N. Naik, Under Secretary (Rev-I).

Porvorim, 14th November, 2011.

Notification

No. 23/1/2011-RD

Whereas it appears to the Government of Goa (hereinafter referred to as "the Government") that the land specified in the Schedule hereto (hereinafter referred to as the "said land") is likely to be needed for public purpose, viz. Land Acquisition for improvement and widening of the existing road leading to Muddi and construction of linking roads in Muddi, Village Mallar of Tiswadi Taluka in Village Panchayat at Sao Mathias.

Now, therefore, the Government hereby notifies under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act") that said land is likely to be needed for the purpose specified above.

All persons interested in the said land are hereby warned not to obstruct or interfere with any surveyor or other persons employed upon the said land for the purpose of the said acquisition. Any contract for the disposal of the said land by sale, lease, mortgage, assignment, exchange or otherwise or any outlay commenced or improvements made thereon without the sanction of the Collector appointed under paragraph 4 below, after the date of the publication of this notification, will under clause (seventh) of Section 24 of the said Act be disregarded by him while assessing compensation for such parts of the said land as may be finally acquired.

If the Government is satisfied that the said land is needed for the aforesaid purpose, a declaration to that effect under Section 6 of the said Act will be published in the Official Gazette and in two daily newspapers and public notice thereof shall be given in due course. If the acquisition is abandoned wholly or in part the fact will also be notified in the same manner.

The Government further appoints under clause (c) of Section 3 of the said Act, the Deputy Collector/SDO, Panaji-Goa to perform the functions of a Collector, under the said Act in respect of the said land.

The Government also authorizes under sub-section (2) of Section 4 of the said Act, the following Officers to do the acts, specified therein in respect of the said land.

1. The Collector, North Goa District, Panaji-Goa.
2. The Deputy Collector/SDO, Panaji-Goa.
3. The Executive Engineer, W. D. II (R), PWD, Panaji-Goa.
4. The Director of Settlement and Land Records, Panaji-Goa.

6. A rough plan of the said land is available for inspection in the Office of the Deputy Collector/ /SDO, Panaji-Goa for a period of 30 days from the date of publication of this Notification in the Official Gazette.

SCHEDULE

(Description of the said land)

Taluka: Tiswadi *Village:* Mallar

Survey No./ /Sub-Div. No.	Names of the persons believed to be interested	Approx. area in sq. mts.
1	2	3
	Name of the occupant.	460
81/7 part	Block Development Office.	
	2) Natalina C. F. Monteiro.	
	Name of the Tenant.	
	1) Natalina C. F. Monteiro.	
204/1 part	Name of the occupant.	455
	1) Maria Pia Vital.	
	Name of the Tenant.	
	1) Self.	
73/1 part	Name of the occupant.	75
	1) Comunidade of Malar.	
	Name of the Tenant.	
	1) Fr. Anacleto Caetano Jose D'Mello.	
73/2-A part	Name of the occupant.	30
	1) Ramdas P. Bhomkar.	
73/2 part	Name of the occupant	30
	1) Kanta B. Bhomkar.	
73/3 part	Name of the occupant.	20
	1) Comunidade of Malar.	
	Name of the Tenant.	
	1) Babuli Govind Kundaikar.	
73/4 part	Name of the occupant.	75
	1) Comunidade of Malar.	
	Name of the Tenant.	
	1) Tulshidas Vaman Bhomkar.	
73/5 part	Name of the occupant.	40
	1) Comunidade of Malar.	
	Name of the Tenant.	
	1) Gopal Rayu Fadte.	
73/6 part	Name of the occupant.	35
	1) Comunidade of Malar.	
	Name of the Tenant.	
	1) Tukaram Mahadev Bhomkar.	
73/7 part	Name of the occupant.	35
	1) Comunidade of Malar.	
	Name of the Tenant.	
	1) Bhiku Narayan Kerkar.	

1	2	3
73/8 part	Name of the occupant.	40
	1) Comunidade of Malar.	
	Name of the Tenant.	
	1) Sadanand Govind Kundaikar.	
205/9 part	Name of the occupant.	400
	1) Comunidade of Malar.	
	Name of the Tenant.	
	1) Arjun Gangu Kundaikar.	
205/10 part	Name of the occupant.	10
	1) Jose Alvito Matias Xavier de Sa.	
	2) Aries Prisco Sabino de sa.	
	3) Henrequeta Dias de Sa.	
	4) Idalima Cruz.	
	5) Tereza Valadares.	
	6) 5-Five.	
	Name of the Tenant.	
	1) Self.	
72/1 part	Name of the occupant.	40
	1) Comunidade of Malar.	
	Name of the Tenant.	
	1) Raghunath Apa Fadte.	
72/2 part	Name of the occupant.	20
	1) Comunidade of Malar.	
	Name of the Tenant.	
	1) Ana Rogina Vales Picaardo.	
72/3part	Name of the occupant.	20
	1) Comunidade of Malar.	
	Name of the Tenant.	
	1) Marcelina Cabral.	
72/4 part	Name of the occupant.	20
	1) Comunidade of Malar.	
	Name of the Tenant.	
	1) Maria Conceicao Castanhas.	
72/5 part	Name of the occupant.	15
	1) Comunidade of Malar.	
	Name of the Tenant.	
	1) Ramnath Ramchandra Harwalkar.	
72/6 part	Name of the occupant.	20
	1) Comunidade of Malar.	
	Name of the Tenant.	
	1) Narayan Keshav Mayonkar.	
72/7 part	Name of the occupant.	30
	1) Comunidade of Malar.	
	Name of the Tenant.	
	1) Budhaji Sitaram Sakhalkar.	
72/8 part	Name of the occupant.	75
	1) Comunidade of Malar.	
	Name of the Tenant.	
	1) Filomena Vales.	
72/9 part	Name of the occupant.	75
	1) Comunidade of Malar.	
	Name of the Tenant.	
	1) Jose Vicento Borzedo Coutinho.	
	2) Ana Severina Josefina Vaz 1/4.	
	3) Gopal Jaidev Chopdekar 3/4.	
72/10 part	Name of the occupant.	250
	1) Comunidade of Malar.	
206/8 part	Name of the occupant.	260
	1) Comunidade of Malar.	
	Name of the Tenant.	
	1) Antonio E. M. D. Menezes.	
65/10 part	Name of the occupant.	5
	1) Comunidade of Malar.	
65/1 part	Name of the occupant.	25
	1) Comunidade of Malar.	
	Name of the Tenant.	
	1) Marcolina Ana Concolcao Menezes.	
65/2 part	Name of the occupant.	70
	1) Comunidade of Malar.	
	Name of the Tenant.	
	1) Vishnu Vitoba Kundaikar.	
65/3 part	Name of the occupant.	100
	1) Comunidade of Malar.	
	Name of the Tenant.	
	1) Francisco Monteiro.	
65/4 part	Name of the occupant.	150
	1) Comunidade of Malar.	
	Name of the Tenant.	
	1) Marcelina Ana Concolcao Menezes.	
65/5 part	Name of the occupant.	30
	1) Comunidade of Malar.	
	Name of the Tenant.	
	1) Marcelina Cabral.	
65/6 part	Name of the occupant.	35
	1) Comunidade of Malar.	
	Name of the Tenant.	
	1) Carolina Picardo.	
65/7 part	Name of the occupant.	30
	1) Comunidade of Malar.	
	Name of the Tenant.	
	1) Marcelina Cabral.	
65/8 part	Name of the occupant.	35
	1) Comunidade of Malar.	
	Name of the Tenant.	
	1) Carolina Picardo.	
65/9 part	Name of the occupant.	40
	1) Namdev Babuso Sawant.	
	Name of the Tenant.	
	1) Self.	
66/6 part	Name of the occupant.	125
	1) Comunidade of Malar.	
	Name of the Tenant.	

1	2	3
	1) Ganesh Raju Sawant.	
	2) Dashrath Ganesh Sawant.	
	3) Eknath Ganesh Sawant.	
66/7 part	Name of the occupant.	175
	1) Comunidade of Malar.	
60/5 part	Name of the occupant.	475
	1) Comunidade of Malar.	
	Name of the Tenant.	
	1) Nanu Sitaram Gavdo.	
62/3 part	Name of the occupant.	15
	1) Comunidade of Malar.	
62/2 part	Name of the occupant.	30
	1) Shubangi Mohan Naik.	
	Name of the Tenant.	
	1) Self.	
62/1 part	Name of the occupant.	390
	1) Comunidade of Malar.	
	Name of the Tenant.	
	1) Gurudas Ravlo Govekar.	
	2) Dayanand Ravlo Govekar.	
62/13 part	Name of the occupant.	80
	1) Comunidade of Malar.	
	Name of the Tenant.	
	1) Gurudas Ravlo Govekar.	
	2) Dayanand Ravlo Govekar.	
61/1 part	Name of the occupant.	1897
	1) Jose Albana Perdro Piedade Fernandes.	
	2) Paul Heredia.	
	House owned by:	
	1) Domlu Paru Madkaikar.	
	2) Nanu Sitaraam Gaudo.	
	3) Khemu Vishnu Gaudo, Narayan Vishnu Gaudo, Rohidas Vishnu Gaudo.	
	4) Shankar Raghu Fadte, Vishwannath Raghu Fadte.	
	5) Premanand Manguesh Sawant.	
	6) Dharma Kolo Velingkar.	
	7) Nogno Vasu Velingkar.	
	8) Anandi Anant Fadte	
	9) Shri Dev Brahaman Temple.	
	10) Raghunath Apa Fadte, Vinayak Apa Fadte.	
	11) Mogo Babuso Sawant.	
	12) Babuso Govind Sawant.	
	13) Mahadev Vishnu Sawant.	
	14) Sadashiv Rama Sawant, Jamuvant Rama Sawnt.	
	15) Ganesh Rayu Sawant.	
	16) Prabhakar Pondri Tari.	
	17) Gopi Kerkar, Babuso Kerkar.	
	18) Tukaram Shiva Sawant.	
	19) Krishna Chimno Kundaikar.	
	20) Babuso Devu Kerkar.	
61/2 part	Name of the occupant.	312
	1) Maria Pia Vital.	
	2) Malini Murlidhar Nair.	
	House owned by:	
	1) Xantaram Hari Naik.	
	2) Tuko Shiva Sawant.	
	Watchman Shantaram Hare Naik.	

Boundaries :

North : Road, S. No. 61/1, 2, 205/9.

South : S. No. 61/1, 2, 206/8.

East : S. No. 204/1, 205/9, 10, 205/11, 206/8, 65/10, 1 to 9, 62/1 to 3, 13, 61/1.

West : S. No. 81/7, 73/1, 2-A, 2 to 8, 72/1 to 10, 66/6, 60/5, 61/1, 2.

Grand Total: 6549

By order and in the name of the Governor of Goa.

Pandharinath N. Naik, Under Secretary (Rev-I).

Porvorim, 11th November, 2011.

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